

AMENDED FINAL LIST OF PROPOSED RECOMMENDATIONS FOR WORKERS COMPENSATION TASK FORCE CONSIDERATION

Task force members: after the distribution of the list of proposals for the task force's consideration at our meeting tomorrow, it was pointed out to me that two specific proposals made several weeks ago during the course of our meetings had not yet been discussed and were not on the list. They are (a) amending the Delaware Code to provide a deadline for appealing utilization review decisions given the Delaware Supreme Court's recent decision in Christiana Care Health Services v. Palomino and (b) requiring specific examinations of insurance carriers whose medical losses substantially exceed the aggregate medical losses reported by the Delaware Compensation Rating Bureau, to determine whether those unusually high medical costs are the result of the carrier's handling of claims. Therefore, I am attaching an amended list of proposals for the task force's consideration at its meeting this Friday, with those two added. The remaining proposals were submitted to me, as I requested at the meeting last Friday, by task force members for consideration at what will be our last meeting dedicated to discussion of specific proposals. As I have previously indicated, our final two task force meetings will be dedicated to discussing a draft report and discussing and approving a final report.

- Change pharmacy reimbursement from 100% AWP/actual charge to a system where AWP is defined and reimbursement is AWP minus 12% for brand name drugs or 20% for generic, plus a dispensing fee. Repackaging would be prohibited, and workers compensation would adopt the DMAP preferred drug list and bar oxycontin use for all patients who are not already receiving it. See attachment from HCAP for details.
- Change pathology reimbursement to impose a cap of four times per year absent pre-authorization for drug testing, allow confirmatory testing only if the point of care testing is not consistent with prescriber's expectations based on the current prescription, and change allowed charge from 85% of current charge to a maximum of \$100. See attachment from HCAP for details.
- Change anesthesia reimbursement from 85% of the actual charge in October, 2006 to a flat unit charge of \$100/unit in northern zip codes and \$76/unit in southern zip codes, with an annual CPI-U adjustment. Flat fees are to be billed at 70% of actual charge. See attachment from HCAP for details.
- Change radiology and pathology/laboratory reimbursements from fee schedule/85% of current charge to be based entirely on the fee schedule. See attachment from HCAP for details.
- Eliminate option for charges for existing procedures to be based on 85% of charge, all charges must be based on the fee schedule.
- Require that the Delaware Compensation Rating Bureau provide an estimate for the rate impact of each of the task force's recommendations, to the extent that they are implemented, in the rate filing that it makes in 2013, and that the Department of Insurance specifically report in any order relating to that rate filing its analysis of the

impact of those recommendations. Require similar analysis of initial medical cost data resulting from implementation of Senate Bill 238 on January 31, 2013 by both DCRB and Department of Insurance as part of 2013 rate filing. Finally, eliminate the requirement that the Department of Insurance find that a noncompetitive market exists before determining whether rates are excessive.

- Revise 19 Del.C. § 2379 to include a comprehensive review of the Workplace Safety Program to determine how it can be improved to promote meaningful safety in the workplace with long term positive benefits for both the employee and employer. This should include a requirement that employers inform the entity conducting the workplace safety examination of the details and outcomes of any workers compensation claims filed against the employer in the prior three years in Delaware. Additionally, the workplace safety credit should also be made available to an employer who has been certified by its insurance carrier to have a safe workplace following an examination which is at least as rigorous as that conducted by the state's workplace safety inspectors.
- Amend the Delaware Code to provide a statutory deadline for appeal of utilization review decisions.
- Amend the Delaware Code to require that the relevant rating bureau provide to the Department of Insurance the identity of any workers compensation insurance carrier with a material market share whose reported increase in Delaware medical expenditures, after accounting for claim volume, is more than 50% higher than the total reported percentage increase in any given reporting year for all carriers combined. Such a report shall trigger an automatic examination by the Department of Insurance, at the carrier's expense, to determine the reason for the unusually high medical costs.
- Require that all employees who file claim of injury forms be provided with forms detailing their rights and responsibilities as workers compensation claimants.